

d. Remarks

OBVIOUSNESS REJECTIONS

1. At page 2, the Office Action rejects claims 1, 2, 4-7, 8 -14, and 17-21 over a combination of Abrahamson (U.S. Patent 5,617,235) and Puzey (U.S. Patent Publication 20030206691).

With respect to independent claims 1 and 13, the Office Action states that “Abrahamson does not disclose [sic] IR laser is a mid IR laser” and also states that Puzey teaches using a “mid IR laser for generating optical communication signal being transmitted in free space”. Office Action, page 2, last sentence; page 4, last sentence. Thus, the rejection relies on Puzey to teach, at least, one feature of the current claims.

Puzey is not proper prior art for rejecting the pending claims. First, Puzey was published on Nov. 6, 2003 and was filed on May 10, 2003. Both dates are later than June 29, 2001, which is the filing date of the present application. Thus, neither its publication date nor its filing date makes Puzey prior art. Second, while Puzey is a continuation of U.S. application 09/815,972 (‘972 application), which was filed on March 22, 2001, the Office Action does not reject pending claims over the ‘972 application. If the Examiner wishes to reject over the ‘972 application, such a rejection should be made explicitly on the record. Here, Applicants also note that the pending application claims priority from U.S. provisional application 60/263,256 (‘256 application), which was filed on Jan. 22, 2001. Since the ‘256 application supports the pending claims and predates the filing date of the ‘972 application, the priority to the ‘256 application would still make the ‘972 improper art for rejecting the pending claims.

Applicants note that the rejections of dependent claims 2, 4 – 12, 14, and 17-22 are moot for similar reasons.

Also, rather than teaching direct modulation as in independent claim 1 or teaching a modulator to modulate pumping of a gain media as in independent claim 13, Puzey teaches modulating the optical output of a continuous wave laser. For example, Puzey’s cover Figure shows a superconducting arrangement 118 that modulates the output of light source 120. See also Puzey, pars. 10 and 20. Thus, when taken as a whole, Puzey would motivate processes and transmitters that perform output modulation of an IR laser rather than performing modulation of the IR laser pumping as in claims 1 and 13. For this reason, even if the combination of Puzey and Abrahamson was proper, the combination

would not make obvious claims 1 or 13 or claims dependent thereon.

2. At page 6, the Office Action rejects claims 3 and 22 over a combination of Abrahamson and Nicia (U.S. Patent 4,744,087) and rejects claim 15 over a combination of Abrahamson and McLellan (U.S. Patent 4,412,333).

Claim 3 is non-obvious, at least, by its dependence on non-obvious base claim 1.

Claims 15 and 22 are non-obvious, at least, by their dependence on non-obvious base claim 13.

CONCLUSION

Applicants respectfully request allowance of pending claims 1 – 22.

In the event of any non-payment or improper payment of a required fee, the Commissioner is authorized to charge or to credit **Lucent Technologies Deposit Account No. 12-2325** to correct the error.

Respectfully,

By John McCabe

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Docket Administrator

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